

# Departmental Disclosure Statement

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Russia Sanctions Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Foreign Affairs and Trade.

The Ministry of Foreign Affairs and Trade certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

6 March 2022

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## Part One: General Policy Statement

The Russia Sanctions Bill establishes a framework for implementing sanctions by New Zealand in response to the aggressive acts and other breaches of international law by the Russian Federation (**Russia**), in particular its illegal invasion of Ukraine, and violations of Ukraine's sovereignty and territorial integrity.

The Bill allows for sanctions to be imposed and enforced on individuals or entities that are responsible for, or are associated with, actions that undermine the sovereignty or territorial integrity of Ukraine or that are of economic or strategic relevance to Russia.

It will prevent individuals or entities from moving assets to New Zealand or using New Zealand's financial system to circumvent sanctions that may be imposed by other countries in the future. It will also enable New Zealand to freeze assets already located here.

The Bill also allows sanctions to be imposed and enforced on designated assets or services (such as trade and financial services). Sanctions could also restrict access to New Zealand territory.

The New Zealand Government continues to register its condemnation, in the strongest possible terms, of Russia's invasion of Ukraine. Russia has shown a flagrant disregard for, and breached, international law's most fundamental norms, abdicated its responsibility to uphold global peace and security, and ignored the international community's outrage at its behaviour. In this context, New Zealand has been consistent in supporting Ukraine's sovereignty and territorial integrity.

As a small country that depends on the international rules-based system for security and prosperity, New Zealand supports the sovereign right of states to determine their own future, including their security relationships. New Zealand upholds international law, and supports respect for it. Regrettably, Russia has used its veto, as a permanent member of the United Nations Security Council (the **Security Council**), to prevent any action, including sanctions, at the multilateral level.

In an emergency session of the United Nations General Assembly on 2 March 2022, New Zealand, along with 140 other United Nations member states, voted for the resolution "Aggression Against Ukraine". Only 5 states voted against the resolution. This is the first time in 40 years that the Security Council has referred such a crisis to the United Nations General Assembly and only the 11th time an emergency session of the General Assembly has been called since 1950. This referral, known as a Uniting for Peace resolution, can only occur in circumstances where the Security Council fails to exercise its primary responsibility to act as required to maintain international peace and security (because, as in this case, Russia has abused its veto power).

The Bill ensures that, despite the members of the Security Council being unwilling to act, New Zealand's condemnation of Russia's illegal actions will be expressed through practical legislative changes. The changes will prohibit or restrict activity inside and outside New Zealand by individuals or entities responsible for, or associated with, this invasion. Given the fluid situation in Ukraine, and the international community's rapidly evolving response, the Bill will ensure that New Zealand has the legislative tools to take further measures to respond to Russia's illegal aggression. Having the ability to implement additional response measures will ensure that New Zealand can contribute to the collective actions of the international community to respond to Russia's actions.

The Bill responds to illegal Russian aggression against the sovereignty and territorial integrity of Ukraine. All States have obligations at international law not to render aid or assistance to those committing illegal acts. Where there is evidence that another State is providing such illegal aid or assistance to Russian aggression—for example, the actions of Belarus in allowing its territory to be used by Russian forces—the Bill allows

relevant individuals and entities from that State to be subject to sanctions. Correspondingly, the Bill also provides the ability to apply further sanctions against Russia if it threatens the sovereignty or territorial integrity of other neighbouring States.

As an act of aggression is considered to be a fundamental breach of international law, all States are legally required to co-operate to bring the aggression to an end, using any lawful measures available.

Sanctions enabled by the Bill reinforce those imposed by the international community and would provide the ability to respond, as appropriate, to threats to the sovereignty and territorial integrity of Ukraine or another country.

The framework that the Bill establishes will allow sanctions to be made by regulation in clearly defined circumstances. The Minister of Foreign Affairs must be satisfied, before recommending the making of regulations to impose sanctions, that the regulations are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine.

Regulations will set out the specific prohibitions and restrictions that apply to the classes of persons, assets, or services concerned. The Bill authorises the Secretary of Foreign Affairs and Trade to issue designation notices that list the further details of the particular persons, assets, or services subject to the sanctions in the regulations. A public sanctions register will be established to list all individuals, entities, assets, or services sanctioned under the Bill.

The framework is designed to provide the flexibility to tailor sanctions to the rapidly changing situation in Ukraine and to enable the Government to take action in a timely way. The Bill incorporates provisions to ensure that sanctions are transparent, able to be reviewed and revoked, temporary rather than permanent, and subject to exemptions where appropriate (for example, to meet humanitarian needs).

While existing processes and mechanisms are in place for the monitoring and enforcement of immigration restrictions and import and export restrictions, the Bill contains a requirement for all reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to report to the Commissioner of Police when they suspect they are possessing assets or providing services that are subject to a sanction. This will facilitate the monitoring and enforcement of any restrictions imposed under the sanctions regulations. At the same time, the Bill confers immunity from legal proceedings on any person who takes action in good faith in order to comply with the Bill or regulations made under the Bill.

The Bill enables government agencies to share information with the Secretary of Foreign Affairs and Trade to support the making, and enforcement, of the sanctions.

Enforcement action can be taken against individuals or entities who fail to comply with a sanction, in the form of civil penalties or criminal fines or imprisonment.

Where designated individuals (other than New Zealand citizens or permanent residents) are already in New Zealand at the time of designation, the Bill allows the sanction regulations to prohibit them from remaining in New Zealand, and links to the deportation provisions of the Immigration Act 2009.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
New Zealand upholds international law, and supports respect for it. Regrettably, Russia has used its veto, as a permanent member of the United Nations Security Council, to prevent any action, including sanctions, at the multilateral level. The Bill ensures that, despite the members of the Security Council being unwilling to act, New Zealand's condemnation of Russia's illegal actions will be expressed through practical legislative changes.	

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
Considering the urgency of the Bill, and the absence of time to undertake a substantial regulatory impact statement (without impacting the implementation required for the Bill), Treasury agrees for the Ministry to undertake a post implementation review in lieu of the regulatory impact assessment.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
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<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
Existing frameworks for monitoring and enforcing sanctions envisaged by the Bill will be used and relied upon, including immigration, exports restrictions, and reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act as duty holders for reporting as examples.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The United Nations Charter is an international treaty, and as such is an instrument of international law. New Zealand is a member state to which the Charter applies, which considers acts of aggression to be a fundamental breach, requiring member states to cooperate in bringing the aggression to an end, using any lawful measures available.

New Zealand does not have an autonomous sanctions regime. As a small state, we have accentuated the UN Security Council's responsibility and centrality in upholding collective security, including through its ability to impose sanctions. That is why the Government currently only has the powers to impose sanctions under the United Nations Act 1946 if these are authorised by the UNSC. However, as a permanent member of the UNSC, Russia has used its veto power to prevent collective action, including sanctions. In light of the UNSC being unable to act, this Bill will ensure that our Government also is able to prohibit or restrict activity in New Zealand by individuals or entities responsible or associated with this invasion. It will ensure that New Zealand has the legislative tools to join the collective action of the international community to respond to Russia's actions.

The Bill will give New Zealand the tools to legally assist and cooperate in bringing the aggression to an end. This includes establishing a framework to permit sanctions to be imposed and enforced on persons, assets or services that are responsible for, or are associated with, actions which undermine the sovereignty or territorial integrity of Ukraine, or that of economic or strategic relevance to Russia. Also, considering the fluidity required to respond, the Bill provides the ability to implement additional response measures to ensure New Zealand has the legislative tools to adequately respond to Russia's illegal aggression.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The Ministry of Foreign Affairs and Trade analysed the Bill and did not identify any implications nor inconsistencies with the rights and interests of Māori protected under the Treaty of Waitangi. It is possible that regulations made under the Bill could have implications, and these will be considered when regulatory proposals are brought to Cabinet.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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The Ministry of Justice are completing a New Zealand Bill of Rights Act 1990 vetting process which will be provided to the Attorney-General. Due to the urgency under which this Bill has been developed, this NZBORA vetting document has not been available prior to the finalisation of this disclosure statement.

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>The following clauses in the Bill create criminal offences and civil penalties:</p> <ul style="list-style-type: none"> <li>• clauses 8 and 9 sets out the threshold for when the Minister may make a recommendation for regulations to be made under the Bill, which triggers the ability to make regulations which give rise to criminal offences or civil penalties under the Bill</li> <li>• clauses 10 and 11 provide scope and effect of sanctions, for example restricting designated persons from traveling to or entering New Zealand; permits sanctions relating to dealing with assets or services; enables the Secretary to further identify persons, assets, or services described in regulations through a designation notice</li> <li>• clause 15 requires registered banks and other duty holders to report to the Police Commissioner, where reasonable in the circumstances, designated assets or assets owned or controlled, directly or indirectly by persons to whom sanctions applies</li> <li>• clauses 20 to 23 creates a civil liability regime for people who breach a sanction without lawful justification or reasonable excuse, including ability for the Attorney-General to seek injunctive actions</li> <li>• clause 24 sets out the offences under the Bill, including offence to knowingly or recklessly breach a sanction; knowingly provide false information or make material omissions; and failing to provide a report required under clause 15 (requirement for duty holders to report to Police Commissioner)</li> <li>• clause 25 provides for additional penalty if offending involved commercial gain</li> <li>• clause 26 explicitly grants the extraterritorial jurisdiction of the Bill to enable commencement of proceedings against acts or omissions that occurred wholly outside New Zealand</li> <li>• clause 30 provides the Police Commissioner powers to order production of or access to records, documents or information from duty holders and share reports with regulators both domestic and international</li> </ul>	
<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice was consulted as part of the wider departmental consultation, including in relation to specific offences and penalties outlined in the Bill.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
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Clause 15 imposes an obligation on duty holders, defined as reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, who are in possession or immediate control of assets that is suspected to be a subject to sanctions under the Bill to report such assets to the Police Commissioner. This would not however depart from the operation of the disclosure principle (IPP 11) under the Privacy Act 2020 as it would avoid prejudice to the maintenance of law (IPP 11(1)(e)(i)). Additionally, clause 16 of the Bill provides protected disclosures for duty holders making reports.

The Bill includes extensive information sharing powers to enable government agencies to share information with the Secretary of Foreign Affairs and Trade to support the making of the sanctions regulations as well as enforcement of them. These clauses are modelled on existing legislation, drawing on the information sharing provisions under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
The Office of the Privacy Commissioner was not consulted on the Bill due to the timeframes involved.	

### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>NO</b>
Given the urgent nature of this Bill, no external consultation was undertaken. However, industry outreach will occur prior to implementing the regulations to ensure the broad structure of the Bill is understood.	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
<p>Although the Bill does not, by compulsory acquisition, take property (as it does not transfer owner's property rights to another person), it does prohibit or restrict the dealing with the asset (which includes property).</p> <p>The Bill allows for regulations to specify how frozen assets are to be preserved, managed, or disposed of during the time they are prohibited or restricted. This will ensure that the operation of frozen assets such as farms or businesses can be preserved where practicable, and that employees and/or livestock can be managed appropriately.</p> <p>The Bill does allow for assets to be seized where there is an attempt to import or export assets in breach of a sanction (this is an existing power under the Customs and Excise Act 2018).</p>	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>Clause 8 provides an example to which sanctions may apply to persons, assets, or services that have been economically or strategically relevant to a country making threats against Ukraine. This retrospective provision intends to take into account 'retired individuals who may not otherwise be captured in the current construction of the sanctions due to being 'retired' but are nonetheless in-scope of the purposes of the sanctions. This is appropriate to meet the purpose of the Bill.</p>	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>Clause 17 provides immunity from criminal and civil proceedings to persons with obligations or duty imposed on them by the Bill to report to the Police Commissioner suspicions of designated assets that may be subject to sanctions. This is important as it not only enables the effective use of sanctions as a tool, but it also removes the hesitation on duty holders to make reports, where they may otherwise hesitate if they are concerned of personal liabilities. Failure to have such immunity may impact the ability of the relevant enforcement agencies to take actions as anticipated under the Bill, with the ultimate aim of minimising the aggression against Ukraine.</p>	

## Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p>Clause 9 enables the making of regulations against persons, assets, or services to which sanctions apply to prohibit or restrict designated persons (i.e. traveling to or entering New Zealand), and dealing with designated assets and services. However, the imposition of the sanctions only apply where the Minister is satisfied that regulations are appropriate to respond to threats to the sovereignty or territorial integrity of Ukraine or another country. The procedure under the Bill does not prevent judicial review, but adds a fixed-term to the regulation, as well as the ability for any person to apply to the Minister to amend, exempt, or revoke any regulation.</p> <p>Clause 13(3)(e) provides that a regulation made under clause 9 of the Bill that prohibits a designated person from remaining in New Zealand means section 157(2) of that Immigration Act 2009 does not apply to the person. Section 157(2) of the Immigration Act is intended to provide an immigration officer with discretion about whether an individual should be deported. In this case, we will have named individuals on a sanctions list under regulations and so it would be inappropriate to give that discretion to an immigration officer. It is important to note that section 157(4) of the Immigration Act does apply which means that a person subject to deportation under sanctions still has the full rights of appeal to the Immigration Protection Tribunal on humanitarian grounds (e.g. risk of torture or other human rights if they were deported to another country). And finally, as you note, they do have an ability to challenge the basis of their listing by applying for an exemption under this Bill, as well as exercising any rights of judicial review.</p>	

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p>This Bill allows for regulations to be made which may prohibit or restrict dealings with assets or services which may be regulated by existing legislation. Sanctions inherently require a departure from existing legislation, but only in relation to the specific persons or things subject to sanctions. The approach in this Bill is consistent with the approach to UNSC sanctions under the United Nations Act 1946. The Bill provides for sanctions made under this Act to depart from primary legislation. Without such a power, a large amount of primary legislation may need to be amended every time sanctions are imposed against a new person or asset. All sanctions imposed by regulations would need to be assessed for compliance with the New Zealand Bill of Rights Act 1990 (NZBORA) which is an important safeguard.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>